

**IN THE UNITED STATES COURT OF
APPEALS FOR VETERANS CLAIMS**

WILLIE J. THREATT JR.,

Appellant,

v.

ROBERT A. MCDONALD,
Secretary of Veterans Affairs,

Appellee.

Case No. No. 15-835

**APPELLANT'S UNOPPOSED
MOTION TO CONSOLIDATE PROCEEDINGS**

Appellant, Willie J. Threatt, by counsel and pursuant Rules 3(e) and 27 of the United States Court of Appeals for Veterans' Claims Rules of Practice and Procedure and the Court's Order of May 19, 2016, respectfully moves the Court for an order consolidating Appellant's other appeal currently pending before the Court, Case Number 14-3679, also styled *Willie J. Threatt, Jr., v. Robert A. McDonald*, with the above-captioned matter.

INTRODUCTION

Appellant seeks consolidation of Case Number 14-3679 with the instant appeal on the grounds that the two appeals concern the same injuries and the same claim for disability compensation benefits, and that Case Number 14-3679 is legally dependent on the outcome of the instant appeal. The two appeals are thus factually and legally intertwined, such that consolidating them would serve the interests of judicial economy.

Accordingly, Appellant respectfully requests that the Court grant his Motion and consolidate Case Number 14-3679 with Case Number 15-835.

STATEMENT OF FACTS

In the decision under review in Case Number 14-3679, the Board of Veterans' Appeals (hereinafter, the "Board") denied Appellant's appeal of the denial of his 1997 claim for disability compensation for injuries to his hips and back. The Board held that a previous decision by the Board, issued in 2003, decided the same claim and, because it believed that decision to be final, denied the appeal because it found Appellant had not offered new and material evidence. (2014 Board Decision at 10). Appellant timely appealed that decision to the Court.

Subsequently, in Case Number 15-835, Appellant appealed the Board's original 2003 decision to this Court. On March 19, 2015, the Court stayed Case Number 14-3679 pending the resolution of Appellant's Motion for Equitable Tolling in this Appeal, which was granted on May 17, 2016. Accordingly, the Court lifted the stay in 14-3679. (*See* Order of May 19, 2016 in 14-3679).

ARGUMENT

The Court should consolidate 14-3679 with this appeal because the two cases are factually and legally intertwined, such that hearing them together will conserve judicial resources and avoid duplication of effort. This Court's Rule 3(e) permits the consolidation of appeals on a party's motion and requires the movant to "assert why consolidation is appropriate[.]" Among other reasons, it is appropriate to consolidate

separate appeals that are “so intimately connected . . .” that resolving them together on appeal serves “the interests of judicial economy and avoidance of piecemeal litigation[.]” *Smith v. Gober*, 236 F.3d 1370, 1372 (Fed. Cir. 2001), as revised (Mar. 21, 2001).

Here, both appeals concern the same injuries, claim for benefits, and initial procedural events. Thus, the material facts of both are identical. Furthermore, because the Court’s grant of equitable tolling in this Appeals calls into question the continuing validity of the Board’s 2014 decision (the subject of 14-3679), the two appeals are legally intertwined as well. *See Boyd v. McDonald*, 27 Vet. App. 63, 75 (2014) (portions of a Board decision relying on the finality of a previous Board decision that was abated at the time are void). Given this interdependence, consolidation will avoid duplicated effort by the parties and the Court in conducting two parallel briefing conferences and preparing two parallel sets of briefs, and will afford more efficient resolution of both. Accordingly, the Court should grant Appellant’s Motion and consolidate Case Number 14-3679 to be heard jointly with Case Number 15-835. The Secretary does not oppose this Motion.

WHEREFORE, Appellant respectfully requests the Court enter an Order consolidating Case Number 14-3679 with above-captioned Case Number 15-835.

Respectfully submitted,

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